United Nations E/CN.15/2014/L.3

Economic and Social Council

Distr.: Limited
14 April 2014

Original: English

Commission on Crime Prevention and Criminal Justice
Twenty-third session
Vienna, 12-16 May 2014
Item 7 of the provisional agenda*
World crime trends and emerging issues and responses in the field of crime prevention and criminal justice

Italy and Mexico: draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the approval of the following draft resolution for adoption by the General Assembly:

United Nations Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences

The General Assembly,

Recalling its resolutions 66/180 of 19 December 2011 and 68/186 of 18 December 2013, entitled "Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking",

Recalling also the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in its resolution 55/25 of 15 November 2000,[1] as well as the United Nations Convention against Corruption, adopted by the Assembly in its resolution 58/4 of 31 October 2003,[2]

Recalling further the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 November 1970,[3] the Convention on Stolen or Illegally

* E/CN.15/2014/1.
[1] United Nations, *Treaty Series*, vol. 2225, No. 39574.
[2] Ibid., vol. 2349, No. 42146.
[3] Ibid., vol. 823, No. 11806.

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Exported Cultural Objects, adopted by the International Institute for the Unification of Private Law on 24 June 1995,[4] and the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954,[5] and the two Protocols thereto, adopted on 14 May 1954[5] and 26 March 1999,[6] and other relevant conventions, and reaffirming the necessity for those States that have not done so to consider ratifying or acceding to and, as States parties, implementing those international instruments,

Alarmed at the growing involvement of organized criminal groups in all forms and aspects of trafficking in cultural property and related offences, and observing that illicitly trafficked cultural property is increasingly being sold through markets, including in auctions, in particular over the Internet, and that such property is being unlawfully excavated and illicitly exported or imported with the facilitation of modern and sophisticated technologies,

Recognizing the indispensable role of crime prevention and criminal justice responses in combating all forms and aspects of trafficking in cultural property and related offences in a comprehensive and effective manner,

Recalling the report of the Secretary-General on strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking (E/CN.15/2013/14),

Welcoming the initiatives promoted within the United Nations crime prevention and criminal justice programme network and the cooperative network established among the United Nations Office on Drugs and Crime of the Secretariat, the United Nations Educational, Scientific and Cultural Organization, the International Council of Museums, the International Criminal Police Organization (INTERPOL), the International Institute for the Unification of Private Law and the World Customs Organization in the area of protection against trafficking in cultural property, and encouraging these entities to continue playing an active role in this area,

Recalling that the theme of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Doha from 12 to 19 April 2015, will be "Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation", and considering that one of the workshops to be held within the framework of the Congress will focus on strengthening crime prevention and criminal justice responses to evolving forms of crime such as cybercrime and trafficking in cultural property, including lessons learned and international cooperation,

Reiterating the significance of cultural property as part of the common heritage of humankind and as unique and important testimony of the culture and identity of peoples and the necessity of protecting cultural property, and reaffirming in that regard the need to strengthen international cooperation in preventing, prosecuting and punishing all aspects of trafficking in cultural property,

[4] Ibid., vol. 2421, No. 43718.
[5] Ibid., vol. 249, No. 3511.
[6] Ibid., vol. 2253, No. 3511.

Recognizing that the United Nations Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences, contained in the annex to the present resolution, can be considered by Member States in the development and strengthening of their policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all situations,

1. *Welcomes* the work of the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 15 to 17 January 2014 to finalize the United Nations Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences;

2. *Adopts* the United Nations Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences, contained in the annex to the present resolution, as a useful instrument to guide the efforts of Member States, at both the policymaking and capacity-building levels, in the area of protection against trafficking in cultural property;

3. *Encourages* Member States to implement the Guidelines to the maximum extent possible and to harmonize their legislation in order to strengthen international cooperation in this field;

4. *Also encourages* Member States to undertake efforts to overcome practical difficulties in the implementation of the Guidelines in their constant endeavour to combat trafficking in cultural property;

5. *Further encourages* Member States to draw upon the Guidelines, in accordance with national law, in their national efforts and measures to ensure that effective crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms are put in place to prevent and combat trafficking in cultural property and related offences;

6. *Invites* Member States and the United Nations Office on Drugs and Crime of the Secretariat to promote a comprehensive debate and target-oriented cooperation on protection against trafficking in cultural property in light of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, as well as on the basis of the outcomes of the regional preparatory meetings held in 2014;

7. *Requests* the United Nations Office on Drugs and Crime to continue to provide advisory services and technical assistance to Member States, upon request, in the area of crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences, in cooperation with relevant international organizations and making use of the work of the institutes of the United Nations crime prevention and criminal justice programme network, as appropriate;

8. *Also requests* the United Nations Office on Drugs and Crime to make the Guidelines widely available, including through the development of relevant tools such as handbooks and training manuals;

9. *Further requests* the United Nations Office on Drugs and Crime to develop a practical assistance tool to assist in the implementation of the Guidelines,

taking into consideration the technical background document developed for the elaboration of the Guidelines and the comments made by Member States;

10. *Invites* Member States to fully exploit all relevant tools developed by the United Nations Office on Drugs and Crime, including the Sharing Electronic Resources and Laws against Crime knowledge management portal (SHERLOC), and also invites Member States to provide to the Secretariat legislation and case law related to trafficking in cultural property, for inclusion in the portal;

11. *Invites* Member States and other donors to provide extrabudgetary resources for those purposes, in accordance with the rules and procedures of the United Nations;

12. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-fifth session on the implementation of the present resolution.

Annex

United Nations Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences

Introduction

1. The United Nations guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences have been developed in recognition of the criminal character of such offences and their devastating consequences for the cultural heritage of humankind. Pursuant to General Assembly resolutions 66/180 and 68/186 and Economic and Social Council resolution 2010/19, draft guidelines were developed by the United Nations Office on Drugs and Crime (UNODC) in consultation with Member States and in close cooperation, as appropriate, with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Criminal Police Organization (INTERPOL) and other competent international organizations.

2. The first draft of the guidelines was reviewed at an informal expert group meeting, held from 21 to 23 November 2011, composed of 20 experts from around the world, with expertise in various fields related to the subject matter of the guidelines, including representatives of INTERPOL, UNESCO and the International Institute for the Unification of Private Law (Unidroit). Based on the valuable comments and advice on improving the draft, a second draft was presented to and discussed by the intergovernmental expert group on protection against trafficking in cultural property in its second meeting, held from 27 to 29 June 2012. Taking into account a compendium, prepared by the Secretariat, of comments made by Member States on the draft guidelines, the intergovernmental expert group reviewed and revised the guidelines at its third meeting, held from 15 to 17 January 2014, with a view to their finalization.

3. The guidelines are based on crime prevention and criminal justice aspects of protection against trafficking in cultural property, taking into consideration a review of current practices and initiatives in several countries in addressing the problem of trafficking in cultural property, as well as principles and norms arising from the analysis of the following international legal instruments: the United Nations Convention against Transnational Organized Crime of 2000; the United Nations

Convention against Corruption of 2003; the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; the Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1999; the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts of 1977 (Additional Protocol I); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970; the Unidroit Convention on Stolen or Illegally Exported Cultural Objects of 1995 and the Convention on the Protection of the Underwater Cultural Heritage of 2001.

4. This set of non-binding guidelines is available to Member States for their consideration in the development and strengthening of crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all situations. Their development follows the expression, by the General Assembly and the Economic and Social Council in their resolutions, of alarm at the growing involvement of organized criminal groups in all forms and aspects of trafficking in cultural property and related offences, and of the need to promote international cooperation to combat crime in a concerted manner.

5. The guidelines have the purpose of serving as a reference for national policymakers and as a tool for capacity-building in the area of crime prevention and criminal justice responses to trafficking in cultural property and related offences, in coordination with UNESCO and other competent international organizations, as appropriate. On the basis of the guidelines finalized by the intergovernmental expert group and submitted to the Commission on Crime Prevention and Criminal Justice, and taking into consideration the technical background document containing the version of the guidelines dated April 2012, and the comments made by Member States, the Commission may ask the Secretariat to develop a practical assistance tool, as appropriate, to aid in the implementation of the guidelines.

6. The guidelines contain four chapters:

(a) Chapter I contains guidelines on crime prevention strategies (including information and data collection, the role of cultural institutions and the private sector, the monitoring of the cultural property market, imports and exports, and archaeological sites, as well as education and public awareness);

(b) Chapter II contains guidelines on criminal justice policies (including adherence to and implementation of relevant international treaties, the criminalization of specific harmful conduct or the establishment of administrative offences, corporate liability, seizure and confiscation and investigative measures);

(c) Chapter III contains guidelines on international cooperation (including matters related to jurisdictional basis, extradition, seizure and confiscation, cooperation among law enforcement and investigating authorities, as well as the return, restitution or repatriation of cultural property);

(d) Chapter IV contains a guideline on the scope of application of the guidelines.

I. Prevention strategies

A. Information and data collection

Guideline 1. States should consider establishing and developing inventories or databases, as appropriate, of cultural property for the purpose of protection against its trafficking. The absence of registration of cultural property in such inventories shall by no means exclude it from protection against trafficking and related offences.

Guideline 2. States should consider, where possible under their domestic legislation, the relevant cultural property as registered in the official inventory of a State that has enacted laws on national or State ownership, provided that the owner State has issued a public formal statement to that effect.

Guideline 3. States should consider:

(a) Introducing or improving statistics on import and export of cultural property;

(b) Introducing or improving statistics, where practical, on administrative and criminal offences against cultural property;

(c) Establishing or improving national databases, as appropriate, on trafficking in cultural property and related offences and on trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded or missing cultural property;

(d) Introducing mechanisms to enable the reporting of suspicious dealings or sales on the Internet;

(e) Contributing to international data collection on trafficking in cultural property and related offences through the United Nations Survey on Crime Trends and Operations of Criminal Justice Systems, conducted by UNODC and the INTERPOL database on stolen works of art and through other relevant organizations;

(f) Contributing to the UNESCO database of national laws and regulations pertaining to cultural property.

Guideline 4. States should consider, as appropriate, establishing a central national authority or empowering an existing authority, and/or enact other mechanisms, for coordinating the activities related to the protection of cultural property against trafficking and related offences.

B. The role of cultural institutions and the private sector

Guideline 5. States should consider encouraging cultural institutions and the private sector to adopt codes of conduct and to disseminate best practices on policies on the acquisition of cultural property.

Guideline 6. States should encourage cultural institutions and the private sector to report suspected trafficking in cultural property cases to law enforcement authorities.

Guideline 7. States should consider promoting and supporting training on cultural property regulations for cultural institutions and the private sector, in cooperation

with relevant international organizations, including, inter alia, rules on the acquisition of cultural property.

Guideline 8. States should encourage, as appropriate, Internet providers and web-based auctioneers and vendors to cooperate in preventing trafficking in cultural property, including through the adoption of specific codes of conduct.

C. Monitoring

Guideline 9. States should consider, in accordance with the relevant international instruments, introducing and implementing appropriate import and export control procedures, such as certificates for the export and import of cultural property.

Guideline 10. States should consider creating and implementing monitoring measures for the market of cultural property, including for the Internet.

Guideline 11. States should, where possible, create and implement programmes for research, mapping and surveillance of archaeological sites for the purpose of protecting them against pillage, clandestine excavations and trafficking.

D. Education and public awareness

Guideline 12. States should consider supporting and promoting public awareness campaigns, including through the media, to foster among the general public a culture of concern about trafficking in cultural property for the purpose of protecting that cultural property against pillage and trafficking.

II. Criminal justice policies

A. International legal texts

Guideline 13. States should consider adopting legislation criminalizing trafficking in cultural property and related offences in accordance with applicable existing international instruments, in particular the Organized Crime Convention, relating to trafficking in cultural property and related offences.

Guideline 14. In bilateral cooperation, States may consider making use of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.[a]

B. Criminal and administrative offences

Guideline 15. States should consider defining the concept of "cultural property", including movable and immovable cultural property, when necessary, for the purposes of criminal law.

Guideline 16. States should consider criminalizing, as serious offences, acts, inter alia, such as:

(a) Trafficking in cultural property;

(b) Illicit export and illicit import of cultural property;

[a] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.1, annex.

(c) Theft of cultural property, or elevating the offence of ordinary theft to a serious offence when it involves cultural property;

(d) Looting of archaeological and cultural sites, and/or illicit excavation;

(e) Conspiracy or participation in an organized criminal group for trafficking in cultural property and related offences;

(f) Laundering, as referred to in article 6 of the Organized Crime Convention, of trafficked cultural property.

Guideline 17. States should consider introducing in their criminal legislation other offences, such as damaging or vandalizing cultural property and the acquisition, with conscious avoidance of the legal status, of trafficked cultural property, when such offences are related to trafficking in cultural property.

Guideline 18. States should consider introducing obligations, as appropriate, to report suspected cases of trafficking of and related offences against cultural property, and to report the discovery of archaeological sites, archaeological finds or other objects of relevant cultural interest and, for those States that have done so, to criminalize the failure to meet those obligations.

Guideline 19. States should consider making it possible, in a way not contradictory to their fundamental legal principles, to infer a perpetrator's knowledge that an object has been reported as trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded, on the basis of objective factual circumstances, including, inter alia, when the cultural property is registered as such in a publicly accessible database.

C. Criminal and administrative sanctions

Guideline 20. States should consider providing proportionate, effective and dissuasive sanctions for the above-mentioned criminal offences.

Guideline 21. States may consider adopting custodial sanctions for some selected criminal offences so as to meet the standard, required under article 2 (b) of the Organized Crime Convention, for "serious crime".

Guideline 22. States should consider adopting bans, disqualifications and the revocation of licences as complementary criminal or administrative sanctions whenever possible.

D. Corporate liability

Guideline 23. States should consider introducing or extending liability (criminal, administrative or civil in nature) of corporations or legal persons for the above-mentioned offences.

Guideline 24. States should consider introducing proportionate, effective and dissuasive sanctions for corporate offences of trafficking in cultural property and related offences, including fines, bans or disqualifications, the revocation of licences, and the revocation of benefits, including tax exemptions or government subsidies where possible.

E. Seizure and confiscation

Guideline 25. States should consider introducing criminal investigation and the search, seizure and confiscation of trafficked cultural property, as well as the proceeds of crimes related to such trafficking, and ensure its return, restitution or repatriation.

Guideline 26. States should consider, in a way not contradictory to their fundamental legal principles, the possibility of requiring that the alleged offender, the owner or the holder (if different) demonstrate the lawful origin of cultural property liable to seizure or confiscation for trafficking or related offences.

Guideline 27. States should consider introducing confiscation of the proceeds of the offence or of property of a value equivalent to such proceeds.

Guideline 28. States may consider using confiscated economic assets for financing expenses for recovery and other prevention measures.

F. Investigations

Guideline 29. States should consider creating specialized law enforcement bodies or units for trafficking in cultural property and related offences, as well as providing specialized training for customs officials, law enforcement personnel and public prosecutors.

Guideline 30. States should consider enhancing coordination, at both the national and international levels, among law enforcement bodies in order to increase the probability of discovering and successfully investigating trafficking in cultural property and related offences.

Guideline 31. States may consider, in the investigation of the above-mentioned offences, especially if related to organized crime, allowing for the appropriate use by their competent authorities of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within their territory, and to allow for the admissibility in court of evidence derived therefrom.

III. Cooperation

A. Jurisdiction

Guideline 32. States should consider establishing their jurisdiction over the above-mentioned criminal offences when such offences are committed within their territory or when committed outside their territory by one of their nationals, in a manner consistent with the principles of sovereign equality, the territorial integrity of States and the non-intervention in the domestic affairs of other States, as enshrined in the Charter of the United Nations and the Organized Crime Convention.

B. Judicial cooperation in criminal matters

Guideline 33. States that have not yet done so should consider becoming parties to existing international law instruments, in particular the Organized Crime Convention, and use them as a basis for international cooperation in criminal matters in respect of trafficking in cultural property and related offences.

Guideline 34. States should consider providing each other with the widest possible mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the above-mentioned offences, also in order to enhance the effectiveness and speed of the procedures.

Guideline 35. States should contribute to and regularly update the UNESCO database of national cultural heritage laws and any other relevant database.

C. Extradition

Guideline 36. States should consider making the crimes against cultural property enumerated in guideline 16 extraditable offences. In the context of extradition procedures, States should also consider adopting and applying, where possible, provisional measures to preserve the cultural property related to the alleged offence for the purpose of restitution.

Guideline 37. States should consider enhancing the effectiveness and speed of extradition for trafficking in cultural property and related offences, where such offences are considered extraditable.

Guideline 38. States should consider, in the case of refusal of extradition only on the basis of nationality, submitting, when requested by the State that had sought extradition, the case to the competent authority in order to consider prosecution.

D. International cooperation for purposes of seizure and confiscation

Guideline 39. States should consider cooperating in identifying, tracing, seizing and confiscating trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property.

Guideline 40. States may consider putting in place mechanisms to enable the contribution of confiscated financial assets to international or intergovernmental bodies concerned with the fight against transnational organized crime, including trafficking in cultural property and related offences.

E. International cooperation among law enforcement and investigating authorities

Guideline 41. States should consider enhancing the exchange of information on trafficking in cultural property and related offences by sharing or interconnecting inventories of cultural property and databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones.

Guideline 42. States should consider, where appropriate, in the framework of international judicial cooperation, enhancing the exchange of information on previous convictions and ongoing investigations of trafficking in cultural property and related offences.

Guideline 43. States should consider concluding bilateral or multilateral agreements or arrangements in order to establish joint investigative teams for trafficking in cultural property and related offences.

Guideline 44. States should consider assisting each other in planning and implementing specialized training programmes for law enforcement personnel.

Guideline 45. States should consider enhancing or establishing privileged channels of communication between their law enforcement agencies.

F. Return, restitution or repatriation

Guideline 46. States should consider, in order to enhance international cooperation in criminal matters, undertaking appropriate measures to recover trafficked, illicitly exported or imported, stolen, looted or illicitly excavated or illicitly traded cultural property for the purpose of their return, restitution or repatriation.

Guideline 47. States should consider pondering, procedurally, as appropriate, the owner State's provisions on national or State ownership in order to facilitate the return, restitution or repatriation of public cultural property.

IV. Scope of application

Guideline 48. States should consider applying the guidelines in any situation, including exceptional circumstances, that foster trafficking in cultural property and related offences, in the framework of the above-mentioned conventions and other relevant international instruments.